

107TH CONGRESS  
1ST SESSION

# S. 854

To amend titles V, XVIII, and XIX of the Social Security Act to promote cessation of tobacco use under the medicare program, the medicaid program, and maternal and child health services block grant program.

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## IN THE SENATE OF THE UNITED STATES

MAY 9, 2001

Mr. DURBIN (for himself, Mr. BROWNBACK, Mr. GRAHAM, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles V, XVIII, and XIX of the Social Security Act to promote cessation of tobacco use under the medicare program, the medicaid program, and maternal and child health services block grant program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medicare, Medicaid,  
5       and MCH Tobacco Cessation Promotion Act of 2001”.

1 **SEC. 2. MEDICARE COVERAGE OF COUNSELING FOR CES-**  
 2 **SATION OF TOBACCO USE.**

3 (a) **COVERAGE.**—Section 1861(s)(2) of the Social Se-  
 4 curity Act (42 U.S.C. 1395x(s)(2)), as amended by section  
 5 105(a) of the Medicare, Medicaid, and SCHIP Benefits  
 6 Improvement and Protection Act of 2000 (114 Stat.  
 7 2763A–471), as enacted into law by section 1(a)(6) of  
 8 Public Law 106–554, is amended—

9 (1) in subparagraph (U), by striking “and” at  
 10 the end;

11 (2) in subparagraph (V), by inserting “and” at  
 12 the end; and

13 (3) by adding at the end the following new sub-  
 14 paragraph:

15 “(W) counseling for cessation of tobacco use (as  
 16 defined in subsection (ww));”.

17 (b) **SERVICES DESCRIBED.**—Section 1861 of the So-  
 18 cial Security Act (42 U.S.C. 1395x), as amended by sec-  
 19 tion 105(b) of the Medicare, Medicaid, and SCHIP Bene-  
 20 fits Improvement and Protection Act of 2000 (114 Stat.  
 21 2763A–471), as enacted into law by section 1(a)(6) of  
 22 Public Law 106–554, is amended by adding at the end  
 23 the following new subsection:

24 “Counseling for Cessation of Tobacco Use

25 “(ww)(1) Subject to paragraph (2), the term ‘coun-  
 26 seling for cessation of tobacco use’ means diagnostic, ther-

1 apy, and counseling services for cessation of tobacco use  
 2 for individuals who use tobacco products or who are being  
 3 treated for tobacco use which are furnished—

4 “(A) by or under the supervision of a physician;  
 5 or

6 “(B) by any other health care professional  
 7 who—

8 “(i) is legally authorized to furnish such  
 9 services under State law (or the State regu-  
 10 latory mechanism provided by State law) of the  
 11 State in which the services are furnished; and

12 “(ii) is authorized to receive payment for  
 13 other services under this title or is designated  
 14 by the Secretary for this purpose.

15 “(2) Such term is limited to—

16 “(A) services recommended in ‘Treating To-  
 17 bacco Use and Dependence: A Clinical Practice  
 18 Guideline’, published by the Public Health Service in  
 19 June 2000, or any subsequent modification of such  
 20 Guideline; and

21 “(B) such other services that the Secretary rec-  
 22 ognizes to be effective.”.

23 (c) PAYMENT AND ELIMINATION OF COST-SHARING  
 24 FOR COUNSELING FOR CESSATION OF TOBACCO USE.—

1           (1) PAYMENT AND ELIMINATION OF COINSUR-  
 2           ANCE.—Section 1833(a)(1) of the Social Security  
 3           Act (42 U.S.C. 1395l(a)(1)), as amended by section  
 4           223(c) of the Medicare, Medicaid, and SCHIP Bene-  
 5           fits Improvement and Protection Act of 2000 (114  
 6           Stat. 2763A–489), as enacted into law by section  
 7           1(a)(6) of Public Law 106–554, is amended—

8                     (A) by striking “and” before “(U)”; and

9                     (B) by inserting before the semicolon at  
 10           the end the following: “, and (V) with respect  
 11           to counseling for cessation of tobacco use (as  
 12           defined in section 1861(w)), the amount paid  
 13           shall be 100 percent of the lesser of the actual  
 14           charge for the service or the amount determined  
 15           by a fee schedule established by the Secretary  
 16           for purposes of this clause”.

17           (2) ELIMINATION OF COINSURANCE IN OUT-  
 18           PATIENT HOSPITAL SETTINGS.—The third sentence  
 19           of section 1866(a)(2)(A) of the Social Security Act  
 20           (42 U.S.C. 1395cc(a)(2)(A)) is amended by insert-  
 21           ing after “1861(s)(10)(A)” the following: “, with re-  
 22           spect to counseling for cessation of tobacco use (as  
 23           defined in section 1861(w)),”.

1           (3) ELIMINATION OF DEDUCTIBLE.—The first  
 2           sentence of section 1833(b) of the Social Security  
 3           Act (42 U.S.C. 1395l(b)) is amended—

4                     (A) by striking “and” before “(6)”;

5                     (B) by inserting before the period the fol-  
 6           lowing: “, and (7) such deductible shall not  
 7           apply with respect to counseling for cessation  
 8           of tobacco use (as defined in section  
 9           1861(w))”.

10          (d) EFFECTIVE DATE.—The amendments made by  
 11          this section shall apply to services furnished on or after  
 12          the date that is 1 year after the date of enactment of this  
 13          Act.

14      **SEC. 3. PROMOTING CESSATION OF TOBACCO USE UNDER**  
 15                     **THE MEDICAID PROGRAM.**

16          (a) DROPPING EXCEPTION FROM MEDICAID PRE-  
 17          SCRIPTION DRUG COVERAGE FOR TOBACCO CESSATION  
 18          MEDICATIONS.—Section 1927(d)(2) of the Social Security  
 19          Act (42 U.S.C. 1396r–8(d)(2)) is amended—

20                     (1) by striking subparagraph (E);

21                     (2) by redesignating subparagraphs (F)  
 22           through (J) as subparagraphs (E) through (I), re-  
 23           spectively; and

24                     (3) in subparagraph (F) (as redesignated by  
 25           paragraph (2)), by inserting before the period at the

1       end the following: “, except agents approved by the  
 2       Food and Drug Administration for purposes of pro-  
 3       moting, and when used to promote, tobacco ces-  
 4       sation”.

5       (b) REQUIRING COVERAGE OF TOBACCO CESSATION  
 6       COUNSELING SERVICES FOR PREGNANT WOMEN.—Sec-  
 7       tion 1905(a)(4) of the Social Security Act (42 U.S.C.  
 8       1396d(a)(4)) is amended—

9               (1) by striking “and” before “(C)”; and

10              (2) by inserting before the semicolon at the end  
 11       the following new subparagraph: “; and (D) coun-  
 12       seling for cessation of tobacco use (as defined in sec-  
 13       tion 1861(w)) for pregnant women”.

14       (c) REMOVAL OF COST-SHARING FOR TOBACCO CES-  
 15       SATION COUNSELING SERVICES FOR PREGNANT  
 16       WOMEN.—Section 1916 of the Social Security Act (42  
 17       U.S.C. 1396o) is amended in each of subsections (a)(2)(B)  
 18       and (b)(2)(B), by inserting “, and counseling for cessation  
 19       of tobacco use (as defined in section 1861(w))” after  
 20       “complicate the pregnancy”.

21       (d) EFFECTIVE DATE.—The amendments made by  
 22       this section shall apply to services furnished on or after  
 23       the date that is 1 year after the date of enactment of this  
 24       Act.

1 **SEC. 4. PROMOTING CESSATION OF TOBACCO USE UNDER**  
2 **THE MATERNAL AND CHILD HEALTH SERV-**  
3 **ICES BLOCK GRANT PROGRAM.**

4 (a) QUALITY MATERNAL AND CHILD HEALTH SERV-  
5 ICES INCLUDES TOBACCO CESSATION COUNSELING AND  
6 MEDICATIONS.—Section 501 of the Social Security Act  
7 (42 U.S.C. 701) is amended by adding at the end the fol-  
8 lowing new subsection:

9 “(c) For purposes of this title, counseling for ces-  
10 sation of tobacco use (as defined in section 1861(vv)),  
11 drugs and biologicals used to promote smoking cessation,  
12 and the inclusion of antitobacco messages in health pro-  
13 motion counseling shall be considered to be part of quality  
14 maternal and child health services.”.

15 (b) EFFECTIVE DATE.—The amendment made by  
16 subsection (a) shall take effect on the date that is 1 year  
17 after the date of enactment of this Act.

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